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ALEXANDER L. STEVAS,
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No. 82-391

In the Supreme Court of the United States

OCTOBER TERM, 1982

SHELDON R. WAXMAN,

Petitioner,

v.

CITY OF CHICAGO, RICHARD LEFEVOUR and RICHARD BRZECZEK, Chicago Police Superintendent,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED

1. Does one who has been arrested and then enlarged on bond meet the "custody" requirements of 28 U.S.C. §2254 (habeas corpus)?

2. Can the exhaustion requirement be raised *sua sponte* by the Court of Appeals without a hearing and was that "issue" frivolous because of Petitioner's claim that there was no State procedure for the assertion of violations of Federal Constitutional Rights?

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner prays that a Writ of Certiorari be issued concerning the judgment of the Court of Appeals entered on April 14, 1982.

OPINION BELOW

The Per Curiam unpublished order of a panel of the Seventh Circuit is reprinted in full as Ex. A-1 of the Petition for Rehearing En Banc. See Appendix. The Petition for Rehearing En Banc was filed on April 27, 1982 but not denied until June 22, 1982. See Appendix.

JURISDICTION

Jurisdiction is predicated on Title 28 U.S.C. Section 1254(1); 62 Stat. 928. This appeal is taken within 90 days, less the time tolled by the Petition for Rehearing En Banc pursuant to 28 U.S.C. §2101(c).

STATEMENT

Following the accepted and prescribed rules of the District Court for the Northern District of Illinois, Petitioner filed his 28 U.S.C. Sec. 2254 Habeas Corpus Petition. See Appendix. Among other things the Petition alleged specifications of unconstitutionality (14th Amendment) in the enforcement of Chicago's parking ticket revenue collection apparatus. It also alleged that Petitioner was free on bond after the *ex parte* Court order had been entered fining him $320 and that the City's provided judicial remedy for the vindication of the alleged Federal Constitutional Rights did not exist.

After the *sua sponte* dismissed by the trial court, an appeal was taken to the Seventh Circuit. Without permitting oral argument, the Court of Appeals panel affirmed. The trial court's dismissal was affirmed because Petitioner it was claimed did not meet the custody requirement of *Hanson* v. *Circuit Court*, 591 F.2d 404, 407 (7th Cir.) *cert. denied*, 100 S.Ct. 220 (1979) even though he had been arrested and enlarged on bond. The Court of Appeals panel also "threw in" the additional, *sua sponte* basis that there had been no exhaustion of administrative remedies.*

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* Petitioner had offered to prove that the traffic court was not a Court but was only a "cash register." See Appendix.

Petitioner had offered to amend his Section 2254 Writ Petition into a Title 42 U.S.C. Section 1983 Complaint, although the Petition also sought Declaratory Relief pursuant to 28 U.S.C. §2201-02. This offer was obviously refused by the trial court's dismissal without permitting any amendment.* After the trial court's *sua sponte* dismissal a new Section 1983 Complaint was filed, as a class action.**

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* The Motion to Reconsider reiterated the offer to amend and advised that the parking ticket harrassment problem was certain to reoccur. See, *Wooley* v. *Maynard*, 430 U.S. 705 (1977).

** An appeal in the Seventh Circuit is pending on the dismissal of that Complaint. See Seventh Circuit Docket #82-1471. Consolidation of these appeals below was repeatedly denied.

REASONS FOR GRANTING THE WRIT

I.

IS THE HANSON RULING, AS INTERPRETED IN THIS CASE, CONTRARY TO THIS COURT'S STANDARDS OF CUSTODY FOR HABEAS CORPUS PURPOSES IN THE SEVENTH CIRCUIT.

Obviously "fine only" offenses can be reinforced by imprisonment. Furthermore the "bonding" procedure includes an arrest. See, 38 Ill. Rev. Stat. Secs. 110-10.

This Court has greatly expanded the "custody" requirement and the panel's application to the facts of this case are contrary to the following Court's decisions: *Jones* v. *Cunningham*, 371 U.S. 236 (1963); *Hensley* v. *Municipal Court*, 411 U.S. 345 (1973).

II.

EXHAUSTION OF REMEDIES IS NOT AN ISSUE WHICH CAN BE CONSIDERED WITHOUT A HEARING. A HEARING WOULD HAVE SHOWED THAT THERE WAS NO STATE PROCEDURE FOR THE ASSERTION OF VIOLATIONS OF FEDERAL CONSTITUTIONAL RIGHTS.

As stated by the Court in *Allen* v. *McCurry*, ____ U.S. ____, 49 LW 4018 (1980):

> "Collateral estoppel does not apply where the party against whom an earlier court decision is asserted did not have a full and fair opportunity to litigate the claim or issue decided by the first court. See text, at n. 7, *supra*." See, also, *Sharlitt* v. *Gorinstein*, 535 F.2d 282 (5th Cir. 1976).

We submit that the scope of the state procedure can only be determined at a hearing before the trial court. See, *Hernandez* v. *Danaher*, 405 F.Supp. 757 (N.D. Ill., 1975); *rev'd sub nom; Trainor* v. *Hernandez*, 431 U.S. 434 (1977), *on remand*, 471 F.Supp. 516 (N.D. Ill., 1978), *aff'd sub nom; Quern* v. *Hernandez*, 99 S. Ct. 1488 (1979). See, also, *Gibson* v. *Berryhill*, 411 U.S. 564 (1973) and *Huffman* v. *Pursue*, 420 U.S. 592, 604 (1975). See, also, *Pierre* v. *Thompson*, ... F.2d ....., 82 L.A. Daily Journal (DAR) 323 (9th Cir., 1/25/82).

Obviously, if the state "procedure" doesn't even allow Federal Constitutional issues to be *raised*, federal claims cannot be adjudicated. The "comity" argument totally disappears under such circumstances and the federal courts become the forum of last resort.* *Tully* v. *Griffin, Inc.*, 429 U.S. 68, 76 (1976).

To highlight the facts, See Appendix for letter dated December 9, 1977, which explains why there is no State forum for Federal Rights to even be asserted let alone adjudged. Those facts, which are to be admitted as true, certainly takes this matter "out of" the Exhaustion Doctrine—compliance with which was pleaded in the §2254 Petition.

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* See, Comment, The Three Stages of Hernandez: Federal Abstention and the Unconstitutionality of the Illinois Attachment Act—*Trainor* v. *Hernandez*, 28 DePaul Law Review 901, 910-912 (1979).

CONCLUSION

The subject matter of this controversy involves matters of importance to *all* of *us*—the Great Writ. Given the economic difficulties great principles must stand firm. As has been often stated, crisis situations often demand Constitutional vigilance. Moreover, the Courts of Appeals and the States are in need of a formal declaration that the Writ is not dead.

Revolutions have been fought over such principles. The Writ greatly predates our Constitution and it appears to be one of the most primative needs of a society of law. The Writ of Certiorari should issue, requiring full briefing and examination.

The desire to get even with litigants and their lawyers would be an affirmation that only the rule of man exists.* Such could not be blended with the American psyche.

Respectfully submitted,

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* See, Petition for Writ of Certiorari etc., *Jordan and Waxman* v. *Maneibis*, Docket No. _____ (filed August 30, 1982) and the Cert. Petition cited therein.